

**Board of Appeals**

Town Hall • 40 Center Street • Fairhaven, MA 02719

Meeting MinutesFAIRHAVEN TOWN CLERK  
RCUD 2023 OCT 4 PM 12:06**I. ADMINISTRATIVE BUSINESS****1. Quorum/Attendance**

Peter DeTerra opened the September 5, 2023, meeting at 6:00 PM. He introduced the board members and read the protocol for Zoning Board of Appeals meetings and Open Public Meeting Law.

For this meeting, the Zoning Board of Appeals convened in-person, as well as by telephone and video conference via Zoom as posted on the Town's website identifying how the public may join. The meeting was recorded and will be televised at a later date; some attendees participated by phone and video conference and used chat on Zoom.

**Quorum/Attendance, Town Hall:** Peter DeTerra, Kenneth Kendall, Peg Cook, Ruy daSilva, Patrick Carr, Daryl Manchester, Nicholas Sylvia, and Andrew Romano

**Zoom:** None

**Absent:** None

**Building Commissioner:** Randy Bassett

**Recording Secretary:** Stephanie Fidalgo

**2. Acceptance of the August 1, 2023, meeting minutes**

Kenneth Kendall made a motion to accept the minutes of August 1, 2023, meeting, and was seconded by Ruy daSilva. The motion passed unanimously via voice vote. (7-0)

Mr. Sylvia arrived at the meeting after the vote to approve the minutes.

**II. CORRESPONDENCE:****1. Owner/Applicant, Antone Arruda, of 481 Sconticut Neck Road requests an extension of the previously granted Variance (granted April 5, 2022) in accordance with MGL, Chapter 40A, Section 10. The owner has requested the Board to consider granting a six (6) month extension.**

Mr. Arruda explained to the board that he required this extension as he was still seeking approval from the Conservation Commission.

There was no public comment or questions from the board.

Peter DeTerra made a motion to approve a six (6) month extension of the previously granted

Variance (granted April 5, 2022) in accordance with MGL, Chapter 40A, Section 10. The motion passed unanimously with Peter DeTerra, Peg Cook, Daryl Manchester, Kenneth Kendall, Ruy daSilva, and Patrick Carr in favor (6-0).

### III. PUBLIC HEARINGS:

1. **REF#: ZBA-023-007: 148 Dogwood Street, Map 43A, Lots 153-155.** Applicant and owner: Nancy Santoro. Applicant seeks (1) a Special Permit to construct a 30 ft. x 25 ft. attached garage with a living space above, pursuant to Fairhaven Zoning Bylaw 198-15 Use Regulations and (2) a 5 ft. Variance for the garage to be located 15 ft. from the side property line vs. the 20 ft. minimum requirement, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule. — *Continued from March 7, 2023*

Mr. DeTerra asked if Building Commissioner, Randy Bassett, had received any new plans from the applicant since the last meeting and Mr. Bassett had not, though he noted that she had contacted the Building Department that day.

Ms. Santoro was not present when the board asked her to speak.

Mr. DeTerra suggested continuing the hearing to the October meeting to give time to review the plans.

Ms. Grace Barns of 141 Dogwood Street asked how long a hearing could be continued, Mr. DeTerra answered that it would be continued until the board received the proper information.

Kenneth Kendall made a motion to continue the hearing for 148 Dogwood Street to the October 3, 2023, meeting and was seconded by Ruy daSilva.

The motion passed unanimously with Peter DeTerra, Peg Cook, Daryl Manchester, Kenneth Kendall, Ruy daSilva, and Nicholas Sylvia in favor. (6-0)

2. **REF#: ZBA-023-022: 12 Baker Ave, Map 2, Lots 213-214.** Applicant: Dana Pickup. Owner: Kathryn Pettis. Applicant seeks 1) a Variance to build a 15 ft. x 28 ft. deck 5.3 ft. from the side setback as compared to the minimum 10 ft. side setback and 8.3 ft. from the rear setback as compared to the minimum 30 ft. rear setback, pursuant to Fairhaven Zoning Bylaw 198-18, Intensity of Use Schedule; 2) a Variance for the lot coverage after building the deck to be 59% as compared to the maximum 50% allowed in the Single Residence District, pursuant to Fairhaven Zoning Bylaw 198-18, Intensity of Use Schedule.
  - At the request of the board, a new plan was submitted, changing the applicant's first variance request to "a Variance to build a 16 ft. x 23 ft. deck 5.3 ft. from the side setback as compared to the minimum 10 ft. side setback and 13.2 ft. from the rear

setback as compared to the minimum 30 ft. rear setback, pursuant to Fairhaven Zoning Bylaw 198-18, Intensity of Use Schedule.”

Mr. Dana Pickup spoke to the board via Zoom. He explained that the prior site plan had included all of the decks and porches in the lot coverage calculation, putting it over the maximum 50% allowed, but upon review of Fairhaven Zoning Bylaw, 198-33, Definitions and Word Use, there is a lot coverage exemption made for decks used for access and egress to a building. Front decks must be less than 6 ft. from the front door and rear decks must be under 15 ft. from the rear of the house to qualify for this exemption. As such, the rear deck was redesigned to be 12 ft. from the rear of the house, which eliminated the lot coverage variance request and reduced the rear setback variance request.

After questions from Mr. DeTerra, Mr. Pickup explained that the unusual shape of the deck was to connect the rear deck to the mudroom entrance. The board took a moment to double check and confirm the exact distances of the setbacks of the updated plan.

Kenneth Kendall made a motion to approve a Variance to build a 16 ft. x 23 ft. deck 5.3 ft. from the side setback as compared to the minimum 10 ft. side setback and 13.2 ft. from the rear setback as compared to the minimum 30 ft. rear setback, pursuant to Fairhaven Zoning Bylaw 198-18, Intensity of Use Schedule, and was seconded by Ruy daSilva.

The motion passed unanimously with Peter DeTerra, Peg Cook, Daryl Manchester, Kenneth Kendall, Ruy daSilva, and Andrew Romano in favor (6-0).

3. **REF#: ZBA-023-024: 251 Sconticut Neck Road, Map 10, Lot 166.** Applicant and owner: Robert Faria. Applicant seeks a Variance to build a 16 ft. x 20 ft. shed on the front of the property, pursuant to Fairhaven Zoning Bylaw 198-22, Accessory Buildings and Uses A. (3). — *Continued from July 11, 2023*

Mr. Robert Faria spoke to the board, explaining that due to his property being adjacent to a wetland, the rear tended to flood, and thus the best location for his proposed 16 ft. x 20 ft. shed was his front yard.

Jean Lemieux of 137 Balsam Street spoke in favor, noting that the shed would be hidden behind the bushes that line Mr. Faria’s property.

Mr. Kendall inquired about the height of the shed as it was not clearly marked on the reference drawings. Mr. Bassett advised the applicant to submit a plan which indicated the height and advised him not to go higher than 20 ft. tall as that would require another Variance.

Kenneth Kendall made a motion to approve a Variance to build a 16 ft. x 20 ft. shed on the

front of the property, pursuant to Fairhaven Zoning Bylaw 198-22, Accessory Buildings and Uses A. (3), and was seconded by Ruy daSilva. The motion passed unanimously with Peter DeTerra, Peg Cook, Daryl Manchester, Kenneth Kendall, and Ruy daSilva in favor (5-0).

4. **REF#: ZBA-023-028: 137 Balsam Street, Map 43A, Lots 82 and 83.** Applicant: Holly and Jean Lemieux Owner: Holly Tree Realty Trust c/o Jacqueline Hobson. Applicant seeks a Variance to build a 14 ft. x 26.3 ft addition attached to the existing dwelling 16.6 ft. from both the north and south side property lines as compared to the minimum 20 ft. side setbacks, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Mr. Robert Hobson spoke to the board, explaining that the Holly Tree Realty Trust which owns 137 Balsam Street included himself, his wife Jacqueline Hobson, and their daughter and son-in-law, Holly and Jean Lemieux. Holly and Jean Lemieux were looking to build a 14 ft. x 26.3 ft addition with a sunroom and office attached to the existing house. They required a Variance for the side setbacks as the house was zoned in the rural residential district which requires 20 ft. side setbacks.

Kenneth Kendall made a motion to approve a Variance to build a 14 ft. x 26.3 ft addition attached to the existing dwelling 16.6 ft. from both the north and south side property lines as compared to the minimum 20 ft. side setbacks, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and was seconded by Ruy daSilva.

The motion passed unanimously with Peter DeTerra, Peg Cook, Daryl Manchester, Kenneth Kendall, and Ruy daSilva in favor (5-0).

5. **REF#: ZBA-023-029: 3 Birchfield Street, Map 24, Lot 280. Applicant: Brian Slowik Owner: Slowik Family Trust.** Applicant seeks a Special Permit for storage of a mobile home and for occasional occupation longer than forty-eight (48) hours consecutively, pursuant to Fairhaven Zoning Bylaw 198-16 Use Regulation Schedule, footnote 8. In accordance with Fairhaven Zoning Bylaw 198-8 Special Permit, A. this permit shall be subject to additional conditions, safeguards and limitations on time, space, and use as the board may reasonably require.

Mr. Brian Slowik spoke to the board. He sought to be allowed occasional occupation of his trailer from 3 days to a week at a time in between his camping trips.

Mr. Bassett requested that the board continue this hearing and speak with Town Counsel regarding the on-going issues with the current tenant renting the property. Mr. Slowik explained that he was in the process of evicting the tenant, with a meeting for remediation planned on October 27, 2023. The board suggested continuing the meeting to the November, noting that they could further to continue to the December meeting if required.

There was a question on if the first Tuesday of November was an election day and if so, when

the November meeting would occur. For the record, the Recording Secretary, Ms. Fidalgo, spoke with the Town Clerk after this meeting to confirm that for 2023, the first Tuesday of November – November 7, 2023, was not an election day and the Zoning Board of Appeals could meet that night.

Kenneth Kendall made a motion to continue the hearing for 3 Birchfield Street to the November 7, 2023, meeting and was seconded by Ruy daSilva.

The motion passed unanimously with Peter DeTerra, Peg Cook, Daryl Manchester, Kenneth Kendall, and Ruy daSilva in favor (5-0).

6. **REF#: ZBA-023-030: Golf Street, Map 28B, Lots 335-340.** Applicant and owner: Adam Oliveira. Applicant seeks a Variance to construct a 28 ft. x 25.6 ft. two story garage with 716.8 sq. ft. of floor space as compared to the maximum 700 sq. ft. of floor space allowed for an accessory building, pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and uses, A. (1).

Mr. Adam Oliveira spoke to the board. He wished to build a two car, two story garage with a space to use as a game and exercise room.

Mr. Kendall asked about the height of the garage, and it was noted to be 20 ft. tall on the architectural plans.

Kenneth Kendall made a motion to approve a Variance to construct a 28 ft. x 25.6 ft. two story garage with 716.8 sq. ft. of floor space as compared to the maximum 700 sq. ft. of floor space allowed for an accessory building, pursuant to Fairhaven Zoning Bylaw 198-22 Accessory Buildings and uses, A. (1) and was seconded by Ruy daSilva.

The motion passed unanimously with Peter DeTerra, Peg Cook, Daryl Manchester, Kenneth Kendall, and Ruy daSilva in favor (5-0).

7. **REF#: ZBA-023-031: 26 Rodman Street, Map 10, Lots 28.** Applicant and owner: Stephen A. Farrell. Applicant seeks a 15.2 ft. Variance to construct a 10 ft. x 6 ft. porch 4.8 ft. from the front property line as compared to the minimum 20 ft. front setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

Mr. Stephen A. Farrell spoke to the board. The previous 4 ft. by 4 ft. porch had rotted and the applicant wished to replace it with a new 10 ft. x 6 ft. porch.

Kenneth Kendall made a motion to approve a Variance to construct a 10 ft. x 6 ft. porch 4.8 ft. from the front property line as compared to the minimum 20 ft. front setback, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and was seconded by Ruy daSilva.

The motion passed unanimously with Peter DeTerra, Peg Cook, Daryl Manchester, Kenneth Kendall, and Ruy daSilva in favor (5-0).

8. **REF#: ZBA-023-032: 21 Oliver Street, Map 37A, Lots 353 & 357.** Applicant: Robert Roderiques  
Owner: Muriel A. Roderiques Revocable Trust. Applicant seeks 1. A Variance to change the existing lot size and shape, pursuant to Fairhaven Zoning Bylaw 198-17 Intensity of use regulations, B and 2. A Variance to reduce the overall lot area by 2606 sq. ft. from 12,800 sq. ft. to 10,194 sq. ft. as compared to the minimum 15,000 sq. ft. in the Single Residence District, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule.

The applicant's attorney, John P. Matthew, spoke to the board. His client had become aware that the board was requested to come in one at a time to talk to the commissioner and were told to deny these Variances. Secondly, the application had been filed on June 7, 2023, and thus it had been 90 days before the applicant had a hearing on the application. He requested that this application be treated no differently than any other.

David M. Davignon of Schneider, Davignon & Leone, Inc. would be speaking on behalf of the applicant. He handed out photos and plans to the board and gave a letter of support to Mr. DeTerra to read.

Mr. DeTerra read the letter in support of the application from neighbor Linda Marie Gouveia of 25 Oliver Street.

Mr. Davignon wished to clarify a note of confusion that happened with this application, saying that the Board of Appeals was not being asked to move lot lines, but rather to approve the Variances required to reduce the lot size so an ANR plan could later be submitted to the Planning Board for approval of the requested changes to the lots. After that, there would be further actions required before finalized deeds could be drafted and conveyances could happen.

Mr. Davignon then covered the history of the lots in question. On February 2, 1953, 18 Nancy Street (Map 37 A, Lot 348) was purchased by John Roderiques Jr. and Muriel Roderiques. On October 26, 1954, the 6,400 sq. ft. vacant lot (Map 37 A, Lot 357) on the corner of Mina Street and Nancy Street was purchased by Muriel Roderiques. At the time, it was considered to be a buildable lot. On June 25, 1974, by John and Muriel Roderiques purchased 21 Oliver Street (Map 37 A, Lot 353). On November 5, 1980, 21 Oliver Street was conveyed to John Roderiques III and Joanne Roderiques, brother and sister and children of John and Muriel Roderiques. At the time of the purchases, it was clear to keep these three properties separated.

On May 17, 1997, John Roderiques Jr. passed away. This left 18 Nancy Street to Muriel Roderiques. Massachusetts Common Merger Law requires non-conforming lots to be merged with abutting land and so 18 Nancy Street merged with the vacant corner lot. If being

discussed today, there could have been an equal land swap to give the corner lot to 21 Oliver Street in exchange for the property containing the garage.

However, on April 8, 2022, Muriel Roderiques had all the properties added into the same trust to allow her children to equally redistribute the property. This action shifted the vacant corner lot to be merged with 21 Oliver Street, as 18 Nancy Street was a conforming lot and 21 Oliver Street was not. This eliminated the possibility of a simple parcel swap ANR plan.

The garage at the center of this application is a 30 ft. by 50 ft. two-story four car garage built around 2002, constructed by Robert Roderiques. The driveway and the doors all face 18 Nancy Street. The ZBA approved the building of the garage at the time. John Roderiques III, owns 21 Oliver Street, does not want to keep the garage on that property and Robert Roderiques, owns 18 Nancy Street, wants the garage connected to his property. The Variance to reduce the overall lot area by 2606 sq. ft. from 12,800 sq. ft. to 10,194 sq. ft. would move the garage with a 5 ft. setback from 21 Oliver Street to 18 Nancy Street.

Mr. Davignon had presented similar situations to Acushnet, Marion, and Mattapoisett, which had all been approved. In this case, an unintended merger had caused the situation and they sought the Variances followed by the ANR plan to rectify it.

Mr. Bassett asked about the decision to build the garage on 21 Oliver Street even though it provided access to 18 Nancy Street. Mr. Robert Roderiques offered to answer, explaining that at the time of building the garage 20 years ago, his focus was on providing a garage for his mother and to make it work the best for her regardless of which lot it was built on as all of the property in question was owned by his family. The garage's location was also influenced by the location of the sewer lift station in the backyard of 18 Nancy Street.

Mr. Robert Roderiques continued, noting that 21 Oliver Street had previously been a 4,500 sq. ft. lot and would be 10,194 sq. ft. if the Variance was approved. Mr. Bassett explained that the issue was that the lot was non-conforming by today's standards, which was issue.

When public comments were requested, John Roderiques III, owner of 21 Oliver Street, supported the Variance as the garage was intended for 18 Nancy Street and he would like it moved to that property.

Ms. Donna Santos of 38 Marguerite Street spoke in favor, saying that the neighbors supported the petition and how there were many non-conforming lots.

Ronald Raphael of 33 Nancy Street spoke in support, noting how he had gone through a similar situation of having a request to split a lot be denied by the Board of Appeals. As a long-time Fairhaven resident, he wanted to push for these variances to be approved.

Shawn R. Miranda of 8 Mina Street spoke in favor, speaking well of Mr. Robert Roderiques as a neighbor and contractor.

Melvin Aviles-Hernandez of 17 Nancy Street spoke in favor, also speaking well of Mr. Robert Roderiques as a neighbor.

Mr. Davignon added that this petition was not looking to create a new buildable lot, but merely to move an existing garage to the property that it better served.

Mr. Kendall suggested that a door could be added to the rear of a garage to allow for access from 21 Oliver Street.

Peter DeTerra made a motion to approve a Variance to change the existing lot size and shape, pursuant to Fairhaven Zoning Bylaw 198-17 Intensity of use regulations, B and was seconded by Kenneth Kendall.

The motion failed to pass with Peter DeTerra voting in favor and Peg Cook, Daryl Manchester, Kenneth Kendall, and Ruy daSilva voting against. (1-4)

Kenneth Kendall made a motion to approve a Variance to reduce the overall lot area by 2606 sq. ft. from 12,800 sq. ft. to 10,194 sq. ft. as compared to the minimum 15,000 sq. ft. in the Single Residence District, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule and was seconded by Peter DeTerra.

The motion failed to pass with Peter DeTerra voting in favor and Peg Cook, Daryl Manchester, Kenneth Kendall, and Ruy daSilva voting against. (1-4)

Ruy daSilva made a motion to adjourn at 6:50 PM and was seconded by Peter DeTerra; all were in favor.

Respectfully Submitted,  
Stephanie A. Fidalgo  
Recording Secretary  
Board of Appeals